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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,179	11/25/2003	Cin Kim	04394/0200136-US0	1178
7278	7590	06/06/2007		
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			EXAMINER	
			MAI, TRI M	
			ART UNIT	PAPER NUMBER
			3781	
			MAIL DATE	DELIVERY MODE
			06/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/707,179

Applicant(s)

KIM, CIN

Examiner

Tri M. Mai

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5, 6 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-6, 8-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

Art Unit: 3781

1. Claims 1-3, and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Heynen (1662039). Heynen teaches a package having a necktie, a box having a bottom portion and a movable top portion, a continuous elastic member 3. With respect to the necktie conceals the elastic member, it is noted that the necktie is only set forth as an intended use. There is no structural difference between the claimed package and the package as set forth in Heynen.

Similar with claim 3 wherein the claim only recites the necktie as an intended use.

2. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Heynen in view of Lobner (1677146). Lobner teaches the position of a retaining strap being on a center line. It would have been obvious to one of ordinary skill in the art to position the strap at the centerline to provide the desired position for holding the neckties.

3. Claims 1, 2, 3, 5, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Louder (690864). Louder teaches a package having a necktie, a box and a movable top portion (lid, page 1, ln. 20), and an elastic member (portion 7) mounted at portions 10 in spaced locations. Applicant is noted that the term "elastic" is broad and encompassing "resilient member". Attention is directed to Sulentic (1501249) with the device in Fig. 4 is called "elastic" (pg. 1, ln. 33), and Corossman (1578807) (pg. 1, nl. 59). With respect to the necktie conceals the elastic member, the tie in Louder conceal the bottom portion of the elastic member as claimed. It is noted that this is similar to that of applicant wherein the necktie conceal the middle portion with the two sides of the elastic member being exposed.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Louder. It would have been obvious to one of ordinary skill in the art to provide a resilient clip with fist and

Art Unit: 3781

second spaced locations are on a centerline to provide additional clip at the desired location for the device.

5. Claims 1, 2, 3, 5, 10, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levy (2057838) in view of Heynen. Levy teaches a box with a bottom and a device loop 19 for holding the necktie. Levy meets all claimed limitations except for the loop portion being made of elastic material. Heynen teaches that it is known in the art to provide an elastic material. It would have been obvious to one of ordinary skill in the art to provide a loop portion of Levy from elastic material to provide an alternative device for holding the necktie.

6. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over anyone of Heynen, Louder or Levy rejections as set forth above in paragraphs 1, 3, and 5 and further in view of Sanchez or Hallam. Sanchez teaches a fabric cover 72. It would have been obvious to one of ordinary skill in the art to provide a fabric cover in Heynen to provide attractive color and/or for advertisement. With respect to the matching color with the tie. It would have been obvious to one of ordinary skill in the art to provide a tie with matching color and patter to provide the desired aesthetic look. It is noted that matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. *In re Seid*, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

7. Applicant's arguments have been fully considered but they are not persuasive. With respect to the Heynen rejection of claim 1. The amended claim only recites the box as an intended use. Thus, the structure of the necktie with respect to the elastic portion is an intended use only. Applicant is noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to

Art Unit: 3781

patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai
Primary Examiner
Art Unit 3781

T.Mai